

**STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE**

SETTLEMENT AGREEMENT AND RELEASE

NOW COMES the Parties, **MARCUS JAMES HENDERSON** and **LISA LOVE HENDERSON** (the “Owner”) and **THE BUNCOMBE COUNTY BOARD OF EDUCATION** (the “Board”) (collectively the “Parties”) and, on this 26th day of March 2018, enter into the following **SETTLEMENT AGREEMENT AND RELEASE** (the “Agreement”).

WHEREAS, the Owner owns a tract of real property described in Book 5607 at Page 1050 in the Buncombe County Registry (the “Property”);

WHEREAS, the Board owns a tract of real property described in Book 1001 at Page 629 in the Buncombe County Registry (the “Board Property”);

WHEREAS, the Owner has alleged that storm water from the Board Property migrates and flows over, under and through the Property and has damaged the Property (the “Events”); and

WHEREAS, without admitting any liability with the respect to the Owner’s allegations concerning the Events, the Board desires to settle with the Owner as specified herein to completely and forever resolve any and all alleged issues.

NOW, THEREFORE, based on the consideration contained herein and acknowledged as sufficient by the Parties, the Parties enter into the following Agreement based on the following terms and conditions:

1. Construction of Storm Water Pipeline and Easement. The Board shall construct a storm water pipe to address storm water run-off issues from the Board Property over, under and through the Property and other adjacent properties. A copy of the approximate location of the storm water pipe and the details thereof is attached to the Storm Water Pipeline Easement and Temporary Construction Easement (the “Easement”). In addition, the Easement makes certain requirements that after the installing of the storm water pipe, the Board shall promptly restore as nearly as practicable the Easement Area to its original condition. A copy of the Easement is incorporated herein and attached hereto as Exhibit A. Such restoration includes: patching and/or repaving any disturbed, paved driveway; returning the landscaped areas to the exiting condition prior to construction; and re-seeding disturbed grass areas.

2. Removing Existing Concrete Pipe. As depicted in Exhibit A, a current fifteen-inch (15'') concrete reinforced pipe exists on the Property (the “RCP”). Presumably, the RCP was installed when the subdivision was created or sometime shortly thereafter. The Owner has represented to the Board that the RCP is failing and since the newly installed storm water pipe will render the RCP moot, has specifically requested that the Board remove the RCP. The Board denies that it has any responsibility for the RCP and is likewise not responsible if the RCP is failing or has failed. However, as further consideration herein and at the Owner’s request, the Board shall remove the RCP and restore the area (the “RCP Area”). Such restoration includes filling-in the

void area where the RCP existed with soil; patching and/or repaving any disturbed, paved driveway; and re-seeding disturbed grass areas. The Board, however, shall not have any further responsibility for the RCP Area and shall not be required to perform any continued or remedial maintenance for the RCP Area.

3. Additional Issues. In addition to the foregoing, the Board shall cause the following to be completed:

A. The Board shall remove the large Maple tree on the Property (said tree being identified in the Easement as the "43in.MAPLE") and shall remove or grind the stump below grade; and

B. Plant a new Red Maple tree (2-3" caliper) following construction at a location to be determined by the Owner.

4. Release. In consideration of the terms and conditions and promises made herein by or on behalf of the Board, the Owner fully discharges and releases the Board and its current and future members, employees, representatives and agents of any and all past, present and future claims, demands, causes of actions, damages, costs, expenses, and liability of any nature whatsoever, whether in law or equity, whether known or unknown, arising out of the Events. The Owner fully understand that this Release is a full and complete general release of all claims against the Board and is intended as a final settlement between the Board and Owner.

The Owner hereby specifically discharges any and all claim(s) they may have against the Board under North Carolina law, or any other federal, state, city, county, board of education or local statute, policy or ordinance, the common law, any term, provision, or amendment to the Constitution of the United States of America or to the Constitution of the State of North Carolina, or otherwise, and any and all claims for relief against the Board which have been or could have been asserted against it arising out of the Events.

The Owner also understands and agrees that this is a release not only of claims against the Board regarding alleged damages and injuries now known, and regarding any damages, injuries or complications that may develop in the future from said presently existing alleged injuries, but also for any additional injuries or complications thereof that may arise, directly or indirectly, from the Events, whether related or unrelated to the presently existing alleged damages, even though at the present time said additional injuries are completely unknown and unsuspected. The Owner further understands and agrees that the consideration contained in this Agreement is accepted not only for the injuries and damages that are now, or in the future may be, claimed to have resulted from the Events, but is also accepted to avoid the uncertainty, expense and delay of litigation. The Owner acknowledges that if they later discover facts different from, or in addition to, those which they now know or believe to be true concerning the Events, or any other subject matter, that nevertheless this release shall be and remain effective in all respects.

The Owner understands and agrees that this Agreement represents the settlement of disputed allegations and is not intended to be, nor shall it be construed as, an admission of liability on the part of the Board.

5. Miscellaneous.

A. This Agreement will be subject to and interpreted under the laws of the State of North Carolina. In the event that any provision or portion of the Agreement shall be found to be void or invalid for any reason, then such portion or provision shall be deemed severable from the remaining provisions or portions of this Agreement and shall not affect the validity of the remaining provisions, which shall be given full effect as if the void or invalid provision had not been included herein.

B. This Agreement contains the entire agreement between the Parties and the Parties agrees that the terms of this Agreement are contractual and not a mere recital.

C. Section headings are inserted for convenience of reference only, are not intended to be a part of this Agreement or in any way to define, limit or describe the scope and intent of the particular sections to which they refer, and accordingly shall not be deemed or construed to affect the meaning of any provision hereof.

D. If any provision of this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

E. The Parties may execute this Agreement in separate counterparts, and the execution of a copy shall have the same effect as the execution of an original. When each Party has signed and delivered one such counterpart to the other, each counterpart shall be deemed an original and, when taken together with the other signed counterparts, shall constitute one (1) Agreement which shall be binding and effective as to all Parties.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK; SIGNATURES
APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF this Agreement is signed and sealed this 26th day of March 2018.

OWNER

Marcus James Henderson

Lisa Love Henderson

**BUNCOMBE COUNTY BOARD OF
EDUCATION**

Tony Baldwin
By: Dr. Tony Baldwin, Superintendent

Preaudit Statement:

As a condition precedent, this instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act.

Deborah B. Lundy 3/26/18
Finance Officer

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Finance Officer